

more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under § 216.106 of this chapter and § 218.16.

#### § 218.13 Mitigation.

(a) When conducting training activities identified in § 218.10(c), the mitigation measures contained in the Letter of Authorization issued under § 216.106 of this chapter and § 218.16 must be implemented. These mitigation measures include, but are not limited to:

(1) General Maritime Measures:

(i) Personnel Training—Lookouts:

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon.

The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of the corners of their eyes, paying attention to the things on the outer edges of their field of vision. Lookouts shall also have night vision devices available for use.

(ii) Operating Procedures & Collision Avoidance:

(A) Prior to major exercises, a Letter of Instruction, Mitigation Measures Message or Environmental Annex to the Operational Order shall be issued to further disseminate the personnel training requirement and general marine species mitigation measures.

(B) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(C) While underway, surface vessels shall have at least two lookouts with binoculars; surfaced submarines shall have at least one lookout with binoculars. Lookouts already posted for safety of navigation and man-overboard precautions may be used to fill this requirement. As part of their regular duties, lookouts shall watch for and report to the OOD the presence of marine mammals.

(D) Personnel on lookout shall employ visual search procedures employing a scanning method in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(E) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the

Lookout Training Handbook  
(NAVEDTRA 12968–D).

(F) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a “safe speed” (the minimum speed at which mission goals or safety will not be compromised) so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped within a distance appropriate to the prevailing circumstances and conditions.

(G) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and implement measures to avoid collisions with marine mammals and avoid activities that might result in close interaction of naval assets and marine mammals. Such measures shall include changing speed and/or course direction and would be dictated by environmental and other conditions (*e.g.*, safety or weather).

(H) Naval vessels shall maneuver to keep at least 500 yds (460 m) away from any observed whale and avoid approaching whales head-on. This requirement does not apply if a vessel’s safety is threatened, such as when change of course will create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in their ability to maneuver. Vessels shall take reasonable steps to alert other vessels in the vicinity of the whale.

(I) Where feasible and consistent with mission and safety, vessels shall avoid closing to within 200 yds (183 m) of marine mammals other than whales (whales addressed above).

(J) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties. Marine mammal detections shall be immediately reported to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(K) All vessels shall maintain logs and records documenting training operations should they be required for event reconstruction purposes. Logs and records shall be kept for a period of 30 days following completion of a major training exercise.

(2) Coordination and Reporting Requirements:

(i) The Navy shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during or within 24 hours after completion of training activities.

(ii) The Navy shall follow internal chain of command reporting procedures as promulgated through Navy instructions and orders.

(3) Mitigation Measures Applicable to Vessel Transit in the Mid-Atlantic during North Atlantic Right Whale Migration: The mitigation measures apply to all Navy vessel transits, including those vessels that would transit to and from East Coast ports and the JAX Range Complex OPAREA.

(i) Mid-Atlantic, Offshore of the Eastern United States:

(A) All Navy vessels are required to use extreme caution and operate at a slow, safe speed consistent with mission and safety during the months indicated below and within a 37 km (20 nm) arc (except as noted) of the specified associated reference points:

(1) South and East of Block Island (37 km (20 NM) seaward of line between 41–4.49° N. lat. 071–51.15° W. long. and 41–18.58° N. lat. 070–50.23° W. long.): Sept–Oct and Mar–Apr

(2) New York/New Jersey (40–30.64° N. lat. 073–57.76° W. long.): Sep–Oct and Feb–Apr.

(3) Delaware Bay (Philadelphia) (38–52.13° N. lat. 075–1.93° W. long.): Oct–Dec and Feb–Mar.

(4) Chesapeake Bay (Hampton Roads and Baltimore) (37–1.11° N. lat. 075–57.56° W. long.): Nov–Dec and Feb–Apr.

(5) North Carolina (34–41.54° N. lat. 076–40.20° W. long.): Dec–Apr

(6) South Carolina (33–11.84° N. lat. 079–8.99° W. long. and 32–43.39° N. lat. 079–48.72° W. long.): Oct–Apr

(B) During the months indicated in paragraph (a)(3)(i)(A) of this section,

Navy vessels shall practice increased vigilance with respect to avoidance of vessel-whale interactions along the mid-Atlantic coast, including transits to and from any mid-Atlantic ports not specifically identified in paragraph (a)(3)(i)(A) of this section.

(C) All surface units transiting within 56 km (30 NM) of the coast in the mid-Atlantic shall ensure at least two watchstanders are posted, including at least one lookout who has completed required MSAT training.

(D) Navy vessels shall not knowingly approach any whale head on and shall maneuver to keep at least 457 m (1,500 ft) away from any observed whale, consistent with vessel safety.

(ii) Southeast Atlantic, Offshore of the Eastern United States—for the purposes of the measures below (paragraphs (a)(3)(ii)(A) & (B) of this section), the “southeast” encompasses sea space from Charleston, South Carolina, southward to Sebastian Inlet, Florida, and from the coast seaward to 148 km (80 NM) from shore. North Atlantic right whale critical habitat is the area from 31–15° N. lat. to 30–15° N. lat. extending from the coast out to 28 km (15 NM), and the area from 28–00° N. lat. to 30–15° N. lat. from the coast out to 9 km (5 NM). All mitigation measures described here that apply to the critical habitat apply from November 15–April 15 and also apply to an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries.

(A) Prior to transiting or training in the critical habitat or associated area of concern, ships shall contact Fleet Area Control and Surveillance Facility, Jacksonville, to obtain latest whale sighting and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised) and path of intended movement. Subs shall contact Commander, Submarine Group Ten for similar information.

(B) The following specific mitigation measures apply to activities occurring within the North Atlantic right whale critical habitat and an associated area of concern which extends 9 km (5 NM) seaward of the designated critical habitat boundaries:

(1) When transiting within the critical habitat or associated area of concern, vessels shall exercise extreme caution and proceed at a slow safe speed. The speed shall be the slowest safe speed that is consistent with mission, training and operations.

(2) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than 12 hours old. Circumstances could arise where, in order to avoid North Atlantic right whale(s), speed reductions could mean vessels must reduce speed to a minimum at which it can safely keep on course or vessels could come to an all stop.

(3) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel’s safety is threatened, such as when a change of course would create an imminent and serious threat to a person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(4) During the North Atlantic right whale calving season, north-south transits through the critical habitat are prohibited, except for Precision Anchoring drills and the Shipboard Electronic System Evaluation Facility range that necessarily operate at slow, safe speed.

(5) Ships, surfaced subs, and aircraft shall report any whale sightings to Fleet Area Control and Surveillance Facility, Jacksonville, by the quickest and most practicable means. The sighting report shall include the time, latitude/longitude, direction of movement and number and description of whale (*i.e.*, adult/calf).

(6) Naval vessel operations in the North Atlantic right whale critical habitat and AAOC during the calving season shall be undertaken during daylight and periods of good visibility, to the extent practicable and consistent with mission, training, and operation. When operating in the critical habitat and AAOC at night or during periods of poor visibility, vessels shall operate as if in the vicinity of a recently reported NARW sighting.

(iii) Northeast Atlantic, Offshore of the Eastern United States:

(A) Prior to transiting the Great South Channel or Cape Cod Bay critical habitat areas, ships shall obtain the latest North Atlantic right whale sightings and other information needed to make informed decisions regarding safe speed (the minimum speed at which mission goals or safety will not be compromised). The Great South Channel critical habitat is defined by the following coordinates: 41–00° N. lat., 69–05° W. long.; 41–45° N. lat., 69–45° W. long.; 42–10° N. lat., 68–31° W. long.; 41–38° N. lat., 68–13° W. long. The Cape Cod Bay critical habitat is defined by the following coordinates: 42–04.8° N. lat., 70–10° W. long.; 42–12° N. lat., 70–15° W. long.; 42–12° N. lat., 70–30° W. long.; 41–46.8° N. lat., 70–30° W. long.

(B) Ships, surfaced subs, and aircraft shall report any North Atlantic right whale sightings (if the whale is identifiable as a right whale) off the northeastern U.S. to Patrol and Reconnaissance Wing (COMPATRECONWING). The report shall include the time of sighting, lat/long, direction of movement (if apparent) and number and description of the whale(s).

(C) Vessels or aircraft that observe whale carcasses shall record the location and time of the sighting and report this information as soon as possible to the cognizant regional environmental coordinator. All whale strikes must be reported immediately. This report shall include the date, time, and location of the strike; vessel course and speed; operations being conducted by the vessel; weather conditions, visibility, and sea state; description of the whale; narrative of incident; and indication of whether photos/videos were taken. Navy personnel are encouraged to take photos whenever possible.

(D) Specific mitigation measures related to activities occurring within the critical habitat include the following:

(1) Vessels shall avoid head-on approaches to North Atlantic right whale(s) and shall maneuver to maintain at least 457 m (500 yd) of separation from any observed whale if deemed safe to do so. These requirements do not apply if a vessel's safety is threatened, such as when change of course would create an imminent and serious

threat to person, vessel, or aircraft, and to the extent vessels are restricted in the ability to maneuver.

(2) When transiting within the critical habitat or associated area of concern, vessels shall use extreme caution and operate at a safe speed (the minimum speed at which mission goals or safety will not be compromised) so as to be able to avoid collisions with North Atlantic right whales and other marine mammals, and stop within a distance appropriate to the circumstances and conditions.

(3) Speed reductions (adjustments) are required when a whale is sighted by a vessel or when the vessel is within 9 km (5 NM) of a reported new sighting less than one week old.

(4) Ships transiting in the Cape Cod Bay and Great South Channel critical habitats shall obtain information on recent whale sightings in the vicinity of the critical habitat. Any vessel operating in the vicinity of a North Atlantic right whale shall consider additional speed reductions as per Rule 6 of International Navigational Rules.

(4) Mitigation Measures for Specific At-sea Training Events—If a marine mammal is injured or killed as a result of the proposed Navy training activities (*e.g.*, instances in which it is clear that munitions explosions caused death), the Navy shall suspend its activities immediately and report such incident to NMFS.

(i) Firing Exercise (FIREX) Using the Integrated Maritime Portable Acoustic Scoring System (IMPASS) (5-in Explosive Rounds):

(A) This activity shall only occur in Areas BB and CC, or in similar areas that will not result in marine mammal takes exceeding the amount indicated in §216.11(c).

(B) During North Atlantic right whale calving season no explosive ordnance shall be used.

(C) Pre-exercise monitoring of the target area shall be conducted with “Big Eyes” prior to the event, during deployment of the IMPASS sonobuoy array, and during return to the firing position. Ships shall maintain a look-out dedicated to visually searching for marine mammals 180° along the ship track line and 360° at each buoy drop-off location.

(D) “Big Eyes” on the ship shall be used to monitor a 600 yard (548 m) buffer zone for marine mammals during naval-gunfire events.

(E) Ships shall not fire on the target if any marine mammals are detected within or approaching the 600 yd (548 m) buffer zone until the area is cleared. If marine mammals are present, operations shall be suspended. Visual observation shall occur for approximately 45 minutes, or until the animal has been observed to have cleared the area and is heading away from the buffer zone.

(F) Post-exercise monitoring of the entire target area shall take place with “Big Eyes” and the naked eye during the retrieval of the IMPASS sonobuoy array following each firing exercise.

(G) FIREX with IMPASS shall take place during daylight hours only.

(H) FIREX with IMPASS shall only be used in Beaufort Sea State three (3) or less.

(I) The visibility must be such that the fall of shot is visible from the firing ship during the exercise.

(J) No firing shall occur if marine mammals are detected within 70 yards (64 m) of the vessel.

(ii) Air-to-Surface Missile Exercises (Explosive):

(A) Aircraft shall initially survey the intended ordnance impact area for marine mammals.

(B) During the actual firing of the weapon, the aircraft involved must be able to observe the intended ordnance impact area to ensure the area is free of marine mammals transiting the range.

(C) Visual inspection of the target area shall be made by flying at 1,500 ft (457 m) altitude or lower, if safe to do so, and at slowest safe speed.

(D) Explosive ordnance shall not be targeted to impact within 1,800 yd (1,646 m) of sighted marine mammals.

(iii) Mine Neutralization Training Involving Underwater Detonations (up to and including 20-lb charges):

(A) This activity shall only occur in Undet North and Undet South of the JAX Range Complex.

(B) Observers shall survey the Zone of Influence (ZOI), a 700 yd (640 m) radius from detonation location for marine mammals from all participating vessels during the entire operation. A

survey of the ZOI (minimum of 3 parallel tracklines 219 yd [200 m] apart) using support craft shall be conducted at the detonation location 30 minutes prior through 30 minutes post detonation. Aerial survey support shall be utilized whenever assets are available.

(C) Detonation operations shall be conducted during daylight hours only.

(D) If a marine mammal is sighted within the ZOI, the animal shall be allowed to leave of its own volition. The Navy shall suspend detonation exercises and ensure the area is clear of marine mammals for a full 30 minutes prior to detonation.

(E) Divers placing the charges on mines and dive support vessel personnel shall survey the area for marine mammals and shall report any sightings to the surface observers. These animals shall be allowed to leave of their own volition and the ZOI shall be clear of marine mammals for 30 minutes prior to detonation.

(F) No detonations shall take place within 3.2 nm (6 km) of an estuarine inlet.

(G) No detonations shall take place within 1.6 nm (3 km) of shoreline.

(H) Personnel shall record any protected species observations during the exercise as well as measures taken if species are detected within the ZOI.

(iv) Small Arms Training—Explosive hand grenades (such as the MK3A2 grenades):

(A) Lookouts shall visually survey for marine mammals prior to and during exercise.

(B) A 200 yd (182 m) radius buffer zone shall be established around the intended target. The exercises shall be conducted only if the buffer zone is clear of marine mammals.

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#### **§ 218.14 Requirements for monitoring and reporting.**

(a) The Holder of the Letter of Authorization issued pursuant to § 216.106 of this chapter and § 218.16 for activities described in § 218.10(b) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as